

ASSEMBLY BILL

No. 614

Introduced by Assembly Member Miller

February 25, 2009

An act to amend Section 13353 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 614, as introduced, Miller. Driving under the influence (DUI): refusal to submit to chemical tests.

(1) Existing law requires the Department of Motor Vehicles to suspend or revoke a person's privilege to operate a motor vehicle, as specified, if the person refuses an officer's request to submit to, or fails to complete, a chemical test or tests for alcohol or drugs, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe that the person had been driving a motor vehicle while under the influence (DUI) and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer. A violation of this provision is a crime.

This bill would in addition impose the same punishment for a refusal to submit to a chemical test for a first violation, or for one or more violations or DUI offenses occurring within 10 years, as the punishment for DUI committed under similar circumstances. By adding imprisonment in the county jail to this offense, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13353 of the Vehicle Code is amended
2 to read:

3 13353. (a) If a person refuses the officer's request to submit
4 to, or fails to complete, a chemical test or tests pursuant to Section
5 23612, upon receipt of the officer's sworn statement that the officer
6 had reasonable cause to believe the person had been driving a
7 motor vehicle in violation of Section 23140, 23152, or 23153, and
8 that the person had refused to submit to, or did not complete, the
9 test or tests after being requested by the officer, the department
10 shall do one of the following:

11 (1) Suspend the person's privilege to operate a motor vehicle
12 for a period of one year.

13 (2) Revoke the person's privilege to operate a motor vehicle for
14 a period of two years if the refusal occurred within 10 years of
15 either (A) a separate violation of Section 23103 as specified in
16 Section 23103.5, or of Section 23140, 23152, or 23153, or of
17 Section 191.5 or subdivision (a) of Section 192.5 of the Penal
18 Code, that resulted in a conviction, or (B) a suspension or
19 revocation of the person's privilege to operate a motor vehicle
20 pursuant to this section or Section 13353.2 for an offense that
21 occurred on a separate occasion.

22 (3) Revoke the person's privilege to operate a motor vehicle for
23 a period of three years if the refusal occurred within 10 years of
24 any of the following:

25 (A) Two or more separate violations of Section 23103 as
26 specified in Section 23103.5, or of Section 23140, 23152, or 23153,
27 or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal
28 Code, or any combination thereof, that resulted in convictions.

29 (B) Two or more suspensions or revocations of the person's
30 privilege to operate a motor vehicle pursuant to this section or
31 Section 13353.2 for offenses that occurred on separate occasions.

32 (C) Any combination of two or more of those convictions or
33 administrative suspensions or revocations.

1 The officer's sworn statement shall be submitted pursuant to
2 Section 13380 on a form furnished or approved by the department.
3 The suspension or revocation shall not become effective until 30
4 days after the giving of written notice thereof, or until the end of
5 a stay of the suspension or revocation, as provided for in Section
6 13558.

7 (D) For the purposes of this section, a conviction of an offense
8 in any state, territory, or possession of the United States, the
9 District of Columbia, the Commonwealth of Puerto Rico, or the
10 Dominion of Canada that, if committed in this state, would be a
11 violation of Section 23103, as specified in Section 23103.5, or
12 Section 23140, 23152, or 23153, or Section 191.5 or subdivision
13 (a) of Section 192.5 of the Penal Code, is a conviction of that
14 particular section of the Vehicle Code or Penal Code.

15 (b) If a person on more than one occasion in separate incidents
16 refuses the officer's request to submit to, or fails to complete, a
17 chemical test or tests pursuant to Section 23612 while driving a
18 motor vehicle, upon the receipt of the officer's sworn statement
19 that the officer had reasonable cause to believe the person had
20 been driving a motor vehicle in violation of Section 23140, 23152,
21 or 23153, the department shall disqualify the person from operating
22 a commercial motor vehicle for the rest of his or her lifetime.

23 (c) The notice of the order of suspension or revocation under
24 this section shall be served on the person by a peace officer
25 pursuant to Section 23612. The notice of the order of suspension
26 or revocation shall be on a form provided by the department. If
27 the notice of the order of suspension or revocation has not been
28 served by the peace officer pursuant to Section 23612, the
29 department immediately shall notify the person in writing of the
30 action taken. The peace officer who serves the notice, or the
31 department, if applicable, also shall provide, if the officer or
32 department, as the case may be, determines that it is necessary to
33 do so, the person with the appropriate non-English notice developed
34 pursuant to subdivision (d) of Section 14100.

35 (d) Upon the receipt of the officer's sworn statement, the
36 department shall review the record. For purposes of this section,
37 the scope of the administrative review shall cover all of the
38 following issues:

1 (1) Whether the peace officer had reasonable cause to believe
2 the person had been driving a motor vehicle in violation of Section
3 23140, 23152, or 23153.

4 (2) Whether the person was placed under arrest.

5 (3) Whether the person refused to submit to, or did not complete,
6 the test or tests after being requested by a peace officer.

7 (4) Whether, except for a person described in subdivision (a)
8 of Section 23612 who is incapable of refusing, the person had been
9 told that his or her driving privilege would be suspended or revoked
10 if he or she refused to submit to, or did not complete, the test or
11 tests.

12 (e) The person may request an administrative hearing pursuant
13 to Section 13558. Except as provided in subdivision (e) of Section
14 13558, the request for an administrative hearing does not stay the
15 order of suspension or revocation.

16 (f) The suspension or revocation imposed under this section
17 shall run concurrently with any restriction, suspension, or
18 revocation imposed under Section 13352, 13352.4, or 13352.5 that
19 resulted from the same arrest.

20 (g) *In addition to the punishment imposed under subdivision*
21 *(a) for a refusal to submit to a chemical test pursuant to Section*
22 *23612, the person shall be punished as specified in Section 23536.*
23 *If a person is found to have violated subdivision (a) and the offense*
24 *occurred within 10 years of one or more separate violations of*
25 *subdivision (a) or convictions pursuant to Section 23103.5, 23152,*
26 *or 23153, the person shall be punished pursuant to Section 23540,*
27 *23546, 23548, 23550, 23550.5, or 23552, as applicable, to the*
28 *same extent those sections apply to one, two, or three or more*
29 *separate violations or convictions within 10 years of an underlying*
30 *violation.*

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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